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No. 83-276

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

SELECTIVE SERVICE SYSTEM, ET AL.,
Appellants,
vs.
MINNESOTA PUBLIC INTEREST RESEARCH GROUP and JOHN DOE, PAUL POE, and RICHARD ROE,
Appellees.

SELECTIVE SERVICE SYSTEM, ET AL.,
Appellants,
vs.
BRADLEY BOE, CARL COE, and FRANK FOE,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

MOTION TO AFFIRM

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QUESTIONS PRESENTED

1. Whether Section 1113 constitutes a bill of attainder prohibited by Article I, Section 9, Clause 3 of the United States Constitution.
2. Whether Section 1113 violates the right against self-incrimination as guaranteed under the Fifth Amendment.
3. Whether Section 1113 denies equal protection under the law as guaranteed by the Fifth Amendment.
4. Whether the District Court had authority to enjoin the enforcement of Section 1113 nationwide.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

MOTION TO AFFIRM

Appellees, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, move that the final judgment and decree of the District Court declaring Section 1113 of the Department of Defense Authorization Act of 1983, Pub.L. No. 97-252, 96 Stat. 748 (1982)

(to be codified at 50 U.S.C. App. §462) (hereinafter "Section 1113"), unconstitutional and permanently enjoining its enforcement be affirmed. Section 1113 constitutes an unlawful bill of attainder, interferes with the right against self-incrimination guaranteed by the Fifth Amendment, and denies equal protection under the law. The decision of the District Court is, therefore, plainly correct under settled law and should be affirmed.

STATEMENT

This is a direct appeal from the final judgment and decree entered on June 16, 1983, by the United States District Court for the District of Minnesota, declaring Section 1113 of the Defense Authorization Act of 1983 unconstitutional and enjoining its enforcement. Appellees generally accept Appellants' version of the procedural history of the case presented in their Jurisdictional Statement at 4-8. However, appellees take exception to appellants' analysis at 5-6 of the legislative record of the enactment of Section 1113 as will be discussed further *infra*.

ARGUMENT

Because the decision of the district court holding Section 1113 unconstitutional is plainly correct under settled law. it should be affirmed.

1. *Section 1113 constitutes a bill of attainder prohibited by Article I, Section 9, Clause 3 of the United States Constitution.* This constitutional provision denies legislatures the ability to declare an individual or identifiable group guilty of crimes and to inflict punishment without judicial process. *United States v. Lovett*, 328 U.S. 303, 318 (1946); *United States v. Brown*, 381 U.S. 437, 442 (1965).

In *Nixon v. Administrator of General Services*, 433 U.S. 425, 468 (1977), the Court defined a bill of attainder as legislation which: 1) determines guilt of an individual or identifiable group; 2) inflicts punishment upon that individual or group; and 3) inflicts punishment without the protections of a judicial trial. *See United States v. Brown*, 381 U.S. at 445, 447; *United States v. Lovett*, 328 U.S. at 315-316; *Cummings v. Missouri*, 71 U.S. (4 Wall.) 277, 323 (1867). Section 1113 meets these criteria for classification as a bill of attainder.

a. *Section 1113 legislatively determines the guilt of an identifiable group.* Section 1113 is specifically directed at a group in much the same way as Missouri's State Constitution was directed at confederate doctors, lawyers and clergymen in *Cummings, supra* (prohibiting them from practicing their professions unless they swore they had no involvement in the Confederacy), and the Labor-Management Reporting and Disclosure Act was directed at communist labor union officers in *Brown, supra* (where members of the communist party were prohibited from holding union office). In both of these cases, the legislation in question required that members of the targeted groups take affirmative action, in the form of an oath or confirmation, in order to escape the presumption of guilt for past acts placed upon them by the legislative action. Similarly, Section 1113 targets young male students who need financial aid to complete their college educations but who have not fully complied with draft registration requirements. The provision requires each student to submit a statement

of compliance in order to escape the presumption of guilt for his past act of nonregistration.[1]

Appellants' argument that Section 1113 is not a bill of attainder because it does not target persons who have engaged in "past" acts is without merit. Unlike *American Communications Ass'n v. Douds*, 339 U.S. 382 (1950), where Section 9(h) of the National Labor Relations Act was held not to be a bill of attainder because it allowed a person to take action at any time to avoid the sanctions of the statute, Section 1113 on its face singles out an ascertainable group based on past conduct. (Appellants' App. A, at 11a-12a.) Appellants contend that Section 1113 allows a college student to register for the draft *anytime* in order to become eligible for federal financial aid, relying upon regulations promulgated by the Department of Education in consultation with the Selective Service System which state specifically that registration can take place *anytime* for eligibility. What appellants neglect to point out is that not only are the regulations irrelevant in this challenge to Section 1113, but also, as the district court held, they are blatantly inconsistent with Section 1113, and, as such, are void. (Appellants' App. B at 33a-34a).

Section 1113 unambiguously provides:

> (f) (1) Any person who is required *under Section 3* [of the Military Selective Service Act, 50 U.S.C. App. §453] to present himself for and submit to registration *under such section* and fails to do so in ac-

[1]Appellants attempt to analogize the operation of Section 1113 to the Veterans Benefits Act, 38 U.S.C. §1501 *et seq.* which defines classes of veterans eligible to receive educational benefits. But that Act does not involve an assumption of guilt of a crime by Congress and an associated punishment determined by Congress. These are the criteria that transform a simple conditional benefit into a bill of attainder. Section 1113 is such a bill of attainder.

> cordance with any proclamation issued *under such section*, or in accordance with any rule or regulation issued *under such section*, shall be ineligible for any form of assistance or benefit provided under title IV of the Higher Education Act of 1965.

[*Emphasis added.*] The operative Presidential Proclamation issued under Section 3 in this present registration system requires, *inter alia*, that all male citizens born after January 1, 1963, *must* register within *thirty* days before or after they reach their eighteenth birthday. Proc. No. 4771, 45 Fed. Reg. 45247 (July 2, 1980). Failure to register within that period of time is a crime and punishable, upon conviction, with a jail sentence of up to five years and a fine of up to $10,000.

Appellants ask this Court to interpret Section 1113 to require compliance, not with Section 3 of the Selective Service Act, but with regulations subsequently promulgated under Section 1113 by the Department of Education. However, Section 1113 expressly requires compliance with Section 3 of the Selective Service Act in order to receive financial aid. The regulations promulgated by the Department of Education can only be viewed as the agency's "post mortem" attempt to cure an otherwise unconstitutional statute.[9]

b. *Section 1113 legislatively inflicts punishment upon the identifiable group.*

In determining whether the sanction contained in Section 1113 constitutes punishment within the meaning of

[9]Appellants, on the one hand, recognize that late registrants are subject to prosecution, and, on the other hand, tell students to register late and then require the admission of such guilt on a "statement" which must be submitted in order to receive college financial aid. This hardly conforms to the dictates of the Constitution.

the bill of attainder proscription, this Court in *Nixon v. Administrator of General Services*, 433 U.S. at 473-8, articulated three factors which must be evaluated: (1) whether the sanction is similar to traditional forms of punishment; (2) whether the law, viewed in light of its restraints, can be said to further non-punitive purposes; and (3) whether there was congressional intent to punish.

"[A] legislative enactment barring designated individuals or groups from participation in specified employments or vocations, a mode of punishment commonly employed against those legislatively branded as disloyal," has been viewed in this Court's jurisprudence as a traditional form of punishment. *Nixon*, 433 U.S. at 474. Indeed, as the Court recognized in *Cummings*, "[t]he deprivation of any right, civil or political, previously enjoyed may be punishment . . . ." 71 U.S. (4 Wall.) at 320.

Denial of federal financial benefits and the consequential deprivation of the opportunity to pursue one's education and chosen profession is a sanction which falls within the definitions of punishment enunciated in *Nixon* and *Cummings*. The courts, including this Court and the district court, recognize the extraordinary importance of education to individuals in our society and its critical role in enabling, or in disabling, citizens from pursuing their chosen careers. *Plyler v. Doe*, 457 U.S. 202 (1982), *reh. den.*, —— U.S. —, 103 S.Ct. 14 (1983); *Dixon v. Alabama State Board of Education*, 294 F.2d 150, 157 (5th Cir. 1979), Appellants' App. A at 3a-4a.

Punishment need not be only punitive but may be imposed for a variety of different purposes. As noted in *Brown*, 381 U.S. at 458:

> It would be archaic to limit the definition of "punishment" to "retribution". Punishment serves several purposes: retributive, rehabilitative, deterrent and preventive. One of the reasons society imprisons those convicted of crimes is to keep them from inflicting future harm, but that does not make imprisonment any less punishment.

See also, *Flemming v. Nestor*, 363 U.S. 603 (1959); *Communist Party of the U.S. v. Subversive Activities Control Board*, 367 U.S. 1 (1960).

Appellants claim that Section 1113 could be reasonably interpreted to further non-punitive legislative purposes. They argue that Section 1113 serves to encourage draft registration compliance, to promote the "fair" allocation of scarce federal aid dollars, and to assist the Selective Service in its enforcement of the draft laws. However, the legislation in question serves no legitimate purpose other than that usually achieved by punishment, retribution and deterrence. *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-9 (1963).[9] *Brown*, 381 U.S. at 458. Following *Kennedy*, the district court concluded that Section 1113 "imposes both the restraint and [a] disability, assumes non-registrants possess guilty intent, promotes the aims of retribution and deterrence, applies to behavior that is already a crime, and is excessively broad in relation to its alternative purposes." (Appellants' App. A at 15A-16A.) It found that appellants' claims would result in laws that constitute

[9]In this case, the Court declared unconstitutional that a portion of the Immigration and Nationality Act of 1952, 8 U.S.C. §1481(a), which stripped pacifists who fled that country to avoid military service of their U.S. citizenship, whether or not they had been convicted of draft evasion. 372 U.S. at 184.

impermissible punishment avoiding the bill of attainder proscription merely by being relabeled as "encouragement".[4]

The legislative history of Section 1113 convincingly demonstrates that Congress intended to punish a particular group of persons who were already subject to criminal prosecution and punishment under Section 12 of the Selective Service Act, 50 U.S.C. App. §462. Its sponsor declared:

> . . . I intend not only to offer this amendment to this legislation, but as other legislation comes down the pike, such as the jobs training bill, such as home loans in various categories, I intend to offer the same amendment until every young man is deprived of any kind of Federal assistance unless he has obeyed the law. . .

Comments of Representative Solomon, 128 Cong. Rec. H4757, (July 28, 1982). Another supporter agreed: "As the gentleman said, the 500,000 [who have not registered], it is a felony, they have violated the law, and they

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[4]Appellants cite *Fullilove v. Klutznick*, 448 U.S. 448 (1980), as supporting the Government's claim that there exists a broad right to condition the receipt of federal monies in any way. Neither *Fullilove* nor any cases cited address or support the imposition of conditions in violation of the Bill of Attainder Clause. In *Fullilove*, the Supreme Court upheld an administrative requirement, which could be waived, that at least 10 percent of federal funds granted for local public works projects be used to procure services from "minority business enterprises." This "condition" was upheld because it furthered Congress' policy of remedying past racial discrimination. Interestingly, the Court stated at 490:

> The Congress must proceed only with programs narrowly tailored to achieve its objectives . . . and, when such a program comes under judicial review, *courts must be satisfied that the legislative objectives and projected administration give reasonable assurance that the program will function within constitutional limitations. (Emphasis added.)*

Here, the Selective Service System's attempt to enforce a criminal statute, without the usual constitutional guarantees associated with arrest and trial, through the vehicle of disbursement of federal financial aid to college students, is not within the bounds of constitutional limitations.

are not entitled to those educational benefits." 128 Cong. Rec. H4757. Thus, this Congressional call for sanctions without trial is clearly in addition to the penalties (5 years imprisonment or $10,000 fine or both) imposed by the Selective Service Act upon conviction for failure to register for the draft. The imposition of punishment was questioned by some Representatives:

> I also question the premise that [additional] punishment should be used in order to induce young men to obey the law. This amendment has the obvious primary objective of increasing the number of men registered for the draft. However, it also has a secondary, and more subtle, objective, which is to punish those individuals who do not register.

Comments of Representative Edgar, 128 Cong. Rec. H4760 (July 28, 1982).

The motivation for passage of Section 1113 expressed in floor debates is associated with punishment—either retribution for failing to register or deterrence of noncompliance as a method of enforcing the draft. No mention whatsoever was made about the relationship of Section 1113 to the goals of the Higher Education Act, 20 U.S.C. §1070 *et seq.*, or to any other educational objective.[5] *See* Comments of Representative Schroeder, 128 Cong. Rec. H4762, (July 28, 1982).

As the district court found (Appellants' App. A at 17a-19a), the motivations expressed by the author of Section 1113 and its supporters provide conclusive evidence of the Congressional intent to punish a specific group of young men for their failure to register for the draft.

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[5]The intent of Congress is also revealed in that Section 1113 was designed not as part of any education act but as an amendment to the Section of the Selective Service Act which imposes criminal sanctions. 50 U.S.C. App. §462.

c. *Section 1113 legislatively determines guilt and inflicts punishment without benefit of the protections of a judicial trial.* Section 1113, which automatically imposes a sanction without judicial intervention, falls precisely within the bill of attainder prohibition.

In *Lovett, supra,* a provision denying certain federal employees their jobs because they were believed to be "subversive" was found to inflict punishment without the safeguard of judicial trial and to therefore constitute an unlawful bill of attainder. This Court noted that the Bill of Attainder Clause was included in the Constitution for the very purpose "to safeguard the people of this country from punishment without trial by duly constituted courts." 328 U.S. at 317-319.

Where the legislature exceeds the bounds of its authority, the judiciary has the responsibility to contain it. Section 1113 exceeds the legislative limits outlined in the Bill of Attainder Clause of the Constitution.

2. *Section 1113 violates the Fifth Amendment's mandate that "no person . . . shall be compelled in any criminal case to be a witness against himself."* This privilege against compelled self-incrimination serves to protect criminal suspects from "the cruel trilemma of self-accusation, perjury, or contempt." *Murphy v. Waterfront Comm'n.*, 378 U.S. 52, 55 (1964).

The privilege applies "in any proceeding, be it criminal or civil, administrative or judicial, investigatory or adjudicatory", 378 U.S. at 94 (White, J., concurring), and includes written submissions to governmental agencies. *Marchetti v. United States,* 390 U.S. 39 (1968) (the privilege against self-incrimination may be asserted by a person who was directed by statute to register his wagering activities for tax purposes).

Appellants argue that there is no violation of the Fifth Amendment privilege because non-registered students are not compelled to provide incriminating information since they need not apply for financial aid. This reasoning has been consistently rejected. *Marchetti, supra; Garrity v. New Jersey*, 385 U.S. 493, (1967). As the Court in *Garrity* noted, "where the choice is 'between the rock and the whirlpool,' duress is inherent in deciding to 'waive' one or the other." 385 U.S. at 498.

Section 1113 forces students who apply for financial assistance under Title IV of the Higher Education Act to fill out a statement of draft registration compliance. In doing so Section 1113 forces students who need tuition assistance to face a trilemma of self-incrimination, perjury, or foregoing educational opportunities. The loss of educational opportunity is as grave a sanction as is the criminal contempt charge contemplated in the *Murphy* trilemma. As the district court acknowledged, "denial of the opportunity to pursue one's education and chosen profession is a severe penalty in this society." (Appellants' App. A at 28a).[8] By threatening such a severe penalty, the mandatory language of Section 1113 compels the production of information within the meaning of the Fifth Amendment. Hence, an applicant for student financial aid must be able to assert the privilege against self-incrimination.

Section 1113 violates the Fifth Amendment's protection against self-incrimination in two ways: first, the statute penalizes those who assert the privilege by denying them access to Title IV funds, thereby burdening the privi-

[8]This Court has repeatedly recognized the importance of higher education, and the ability to pursue one's chosen vocation. *See Plyler, supra; Withrow v. Larkin*, 421 U.S. 35, 44. n.8 (1975); *Vlandis v. Kline*, 412 U.S. 441 (1973).

lege; and, second, the statute's scheme of operation serves to incriminate even those who choose to assert the privilege.

a. *Section 1113 burdens the privilege against self-incrimination.* Under Section 1113 the refusal of an applicant to submit a statement of compliance on the basis of his Fifth Amendment privilege against self-incrimination would automatically cut him off from consideration for federal tuition assistance.

In the past, when people have been punished for asserting their Fifth Amendment privilege against self-incrimination, this Court has been quick to strike down such practices and to uphold the privilege. *See, e.g., Lefkowitz v. Cunningham,* 431 U.S. 801 (1977) (divesting political officeholder of his office and imposing a five-year ban on holding any public or party office for refusal to waive his constitutional immunity in a grand jury investigation of his conduct held unconstitutional); *Lefkowitz v. Turley,* 414 U.S. 70 (1973) (denying public contractors the right to contract with the government for five years upon their refusal to sign waivers of immunity held unconstitutional); *Garrity, supra,* (requiring police officers in an inquiry by the state attorney general concerning the fixing of traffic tickets to respond to questions or face removal from office held unconstitutional); *Spevack v. Klein,* 385 U.S. 511 (1967) (disbarring a lawyer for failure to honor a *subpoena duces tecum* and to testify at the judicial inquiry held unconstitutional). Section 1113 similarly constrains an individual's right to assert a Fifth Amendment privilege and is therefore unconstitutional.

b. *Section 1113 also violates the Fifth Amendment because it incriminates even those who assert the privilege against self-incrimination.* Section 1113 directs that there be communication between the Director of the Selective Service System and the Secretary of Education, including a transmittal of names of applicants from the Secretary to the Director for purposes of verification. The implications of an applicant's assertion of his Fifth Amendment rights are clear. The Selective Service System will be put on notice that the applicant is in violation of the law. "The information required is clearly incriminating to nonregistrants and could also furnish a link in the chain of evidence used to prosecute the nonregistrant." (Appellants' App. A at 23a). *See Albertson v. Subversive Activities Control Board*, 382 U.S. 70, 77 (1965).

Section 1113 requires that students, wholly outside the prosecutorial process, come forward and inform the government as to whether they have registered for the draft. The students are faced with the impermissible trilemma of self-accusation, submitting a false statement of compliance (which gives rise to criminal liability), or forgoing educational opportunities and pursuing their chosen careers.[7] To maintain the Fifth Amendment guarantee that the government may not compel self-incrimination, Section 1113, which provides government assistance only to those who forfeit their rights against self-incrimination, should be declared unconstitutional.

3. *Section 1113 denies students in need of financial aid equal protection under the law.* Although the district court did not reach the issue, Section 1113 violates the Equal Protection Clause of the Constitution because it discriminates on the basis of wealth, sex, and age.

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[7]Indeed, the forgoing of educational opportunities by withdrawing from the federal financial aid program may be self-incriminating for male students who have previously received aid. If these students suddenly withdraw from the program, they leave an incriminating trail.

a. *Section 1113 is discriminatory on the basis of wealth.* The Section 1113 requirement of certifying compliance with draft registration obligations as a prerequisite to obtaining federal assistance for post-secondary education establishes an unnecessary burden and penalty on those who cannot afford to go to college without such assistance. The very purpose of the Higher Education Act, 20 U.S.C. §1070 *et seq.*, and the provisions for federal financial aid is to encourage attendance at colleges and universities for the ultimate benefit of society. This Court also has recognized the critical role of higher education and its importance to growth in society. *Plyler v. Doe*, 457 U.S. at 221.

During the Senate debates which resulted in enactment of Section 1113, Senator Durenberger of Minnesota recognized that Congress, "would be punishing [the] middle class . . . more than we punish those who are wealthy enough to pay their own way through college, and more than those who do not attend college at all." 128 Cong. Rec. S4945 (May 12, 1982). *See also* Comments of Congressman Dellums, 128 Cong. Rec. H4765 (July 28, 1982). Even the bill's sponsor recognized that ". . . maybe we are discriminating against the poor." 128 Cong. Rec. H4767 (July 28, 1982).

While this Court has been reluctant to elevate the standard of review for discrimination based upon wealth to that applied to discrimination based on race, religion, or alienage (although wealth discrimination may have a strong adverse impact on such minority groups), discrimination based upon wealth may be unconstitutional if it is unrelated to a rational legislative purpose and is "invidious". *Dandridge v. Williams*, 397 U.S. 471, 485 (1970). There is no rational

relationship between enforcement of the draft registration requirements of the Selective Service Act and this interference with the purposes the the Higher Education Act which results in termination of essential educational and career opportunities.

The enforcement mechanism for non-registration is clear, 50 U.S.C. App. §462 (1981). Non-registration is a crime subject to indictment, trial, conviction, and punishment, all involving well-established constitutional protections. Section 1113, adding new Section 12(f) to the enforcement section of the Selective Service Act, creates an unconstitutional burden upon a class of students based upon their lack of wealth which is wholly unnecessary and serves no legitimate legislative purpose.

Justice White, concurring in *Vlandis v. Kline*, 412 U.S. 441 (1973), which faced the issue of resident and non-resident college fees, suggests the appropriate standard of review where discrimination arising out of higher education is involved:

> . . . [I]t must now be obvious, or has been all along, that, as the Court's assessment of the weight and value of the individual interest escalates, the less likely it is that mere administrative convenience and avoidance of hearings or investigations will be sufficient to justify what otherwise would appear to be irrational discriminations.
>
> *Here, it is enough for me that the interest involved is that of obtaining a higher education,* . . . It is plain enough that the State has only the most attenuated interest in terms of administrative convenience in maintaining this bizarre pattern of discrimination among those who must or must not pay a substantial tuition to the University. The discrimination imposed

> by the State is invidious and violates the Equal Protection Clause. (*Emphasis added.*)

Here the interest involved is obtaining a higher education which similarly outweighs the appellants' interest, if any, in maintaining Section 1113. Thus, the pattern of discrimination based on wealth is invidious and violates the Equal Protection Clause.

b. *Section 1113 discriminates on the basis of sex.* Utilizing the standard of review described in the previous section, this Court has struck down many laws for discriminating on the basis of sex. In *Frontiero v. Richardson*, 411 U.S. 677 (1973), the Court found that gender-based classifications cannot be sustained merely because they promote some governmental interest. A statute which classifies individuals on the basis of gender must have an "exceeding persuasive justification" for that classification. *Mississippi University for Women v. Hogan*, —— U.S. ——, 73 L.Ed. 2d 1090 (1982); *Craig v. Boren*, 429 U.S. 190, 197 (1976); *see also, Reed v. Reed*, 404 U.S. 71, 76 (1971). Underlying these decisions is the principle that a legislature may not make overbroad generalizations based on sex which are entirely unrelated to any differences between men and women. *Michael M. v. Superior Court of Sonoma County*, 450 U.S. 464, 469 (1981).

Under this analysis, the sex classification in Section 1113 is invidious. While this Court has upheld the sex-based characteristic of the all male draft, *Rostker v. Goldberg*, 453 U.S. 57 (1980), the dissimiliarities between the sexes inherent in military combat roles are irrelevant to education and the policies underlying federal educational financial assistance. No differences exist between

men and women with respect to the importance of higher education to each and to their need for financial assistance.

Appellants have failed to provide an "exceedingly persuasive justification" for discriminating in the distribution of financial aid on the basis of sex.

c. *Section 1113 is discriminatory on the basis of age.* It is not often that a statute discriminates against young adults instead of the "old", but this is one of those cases. Section 3 of the Selective Service Act requires registration only by males between the ages of 18 and 26. While this range of ages may be reasonable with regard to preferability for the draft, it is not reasonable when determining eligibility for educational financial aid. Young men in this age group may be denied financial aid to attend college and to pursue their chosen careers while those in other age groups are not so burdened. Using the standards applicable to discrimination based on wealth and sex, the result is discrimination against young men on the basis of age.

4. *Injunctive relief granted by the district court has nationwide effect.* When a federal statute of nationwide scope is found unconstitutional in an action against those charged with its national enforcement, a court need not, and indeed should not, sanction continuing unconstitutional conduct by limiting its order to a particular judicial district. The very provision in 28 U.S.C. §1252 that any district court judgment holding an Act of Congress unconstitutional may be appealed directly to this Court suggests that such judgments have nationwide effect. In addition, all relevant cases hold that district courts may grant nationwide injunctions.

Califano v. Yamasaki, 442 U.S. 682, 702 (1979), held that the territorial scope of an invalid act or regulation, as opposed to the territorial scope of the plaintiffs, determines the scope of the injunction. Explicitly following *Califano*, the court in *State of New York v. Schweiker*, 83 Civ. 0726 (S.D.N.Y. March 7, 1983), having struck down, as violating the Public Health Services Act, a regulation requiring federally-funded family planning services to notify the parents of any minor who has been provided prescription contraceptives, enjoined the Secretary of Health and Human Services from implementing the regulation anywhere in the United States.

Furthermore, when a district court has personal jurisdiction over a defendant, the district court may issue an injunction which binds the defendant throughout the United States. *Leman v. Krentler-Arnold Hinge Last Co.*, 284 U.S. 448, 451 (1932). *See also, Bailey v. Patterson*, 323 F.2d 201 (5th Cir. 1963) *cert. denied*, 376 U.S. 910 (1969) (despite the absence of a certified class action, an injunction based on a finding that Mississippi's "Segregation Statutes" were unconstitutional was given statewide effect); *National Welfare Rights Organization v. Weinberger*, 377 F.Supp. 86 (D.D.C. 1974) (despite the denial of class certification, a nationwide injunction was granted against the Department of Health, Education and Welfare).

As the district court stated, "any injunction limited to the geographic area of Minnesota would allow defendants to enforce outside the district of Minnesota a statute that this court has found to be unconstitutional on two grounds. Such an anomalous result should be avoided." (Appellants' App. B, at 35a).

CONCLUSION

For the reasons stated herein, the decision of the United States District Court for the District of Minnesota should be affirmed.

Respectfully submitted,

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